

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** PD14-017 & ABC14-005

**Submitted:** March 27, 2014

**PROJECT DESCRIPTION:**

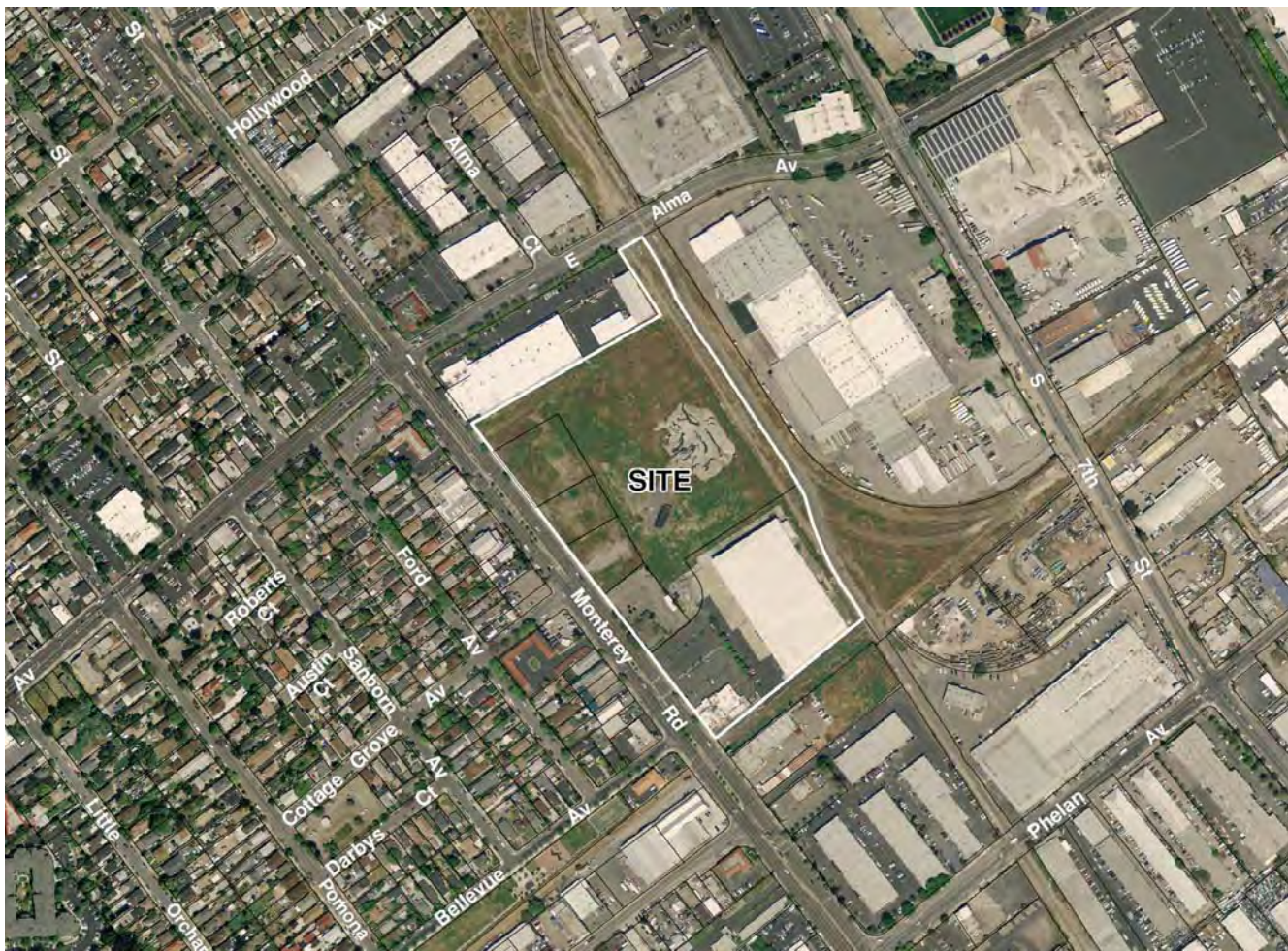
Planned Development Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol in an approved 41,014 square foot grocery store (Walmart Neighborhood Market) on a 4.93 gross acre site

|                  |                                  |
|------------------|----------------------------------|
| Zoning District  | A(PD) Planned Development        |
| General Plan     | Combined Industrial/Commercial   |
| Council District | 7                                |
| Annexation Date  | August 18, 1955<br>July 19, 1956 |
| Specific Plan    | N/A                              |

**LOCATION:**

East side of Monterey Road, approximately 300 feet south of East Alma Avenue

**AERIAL MAP**



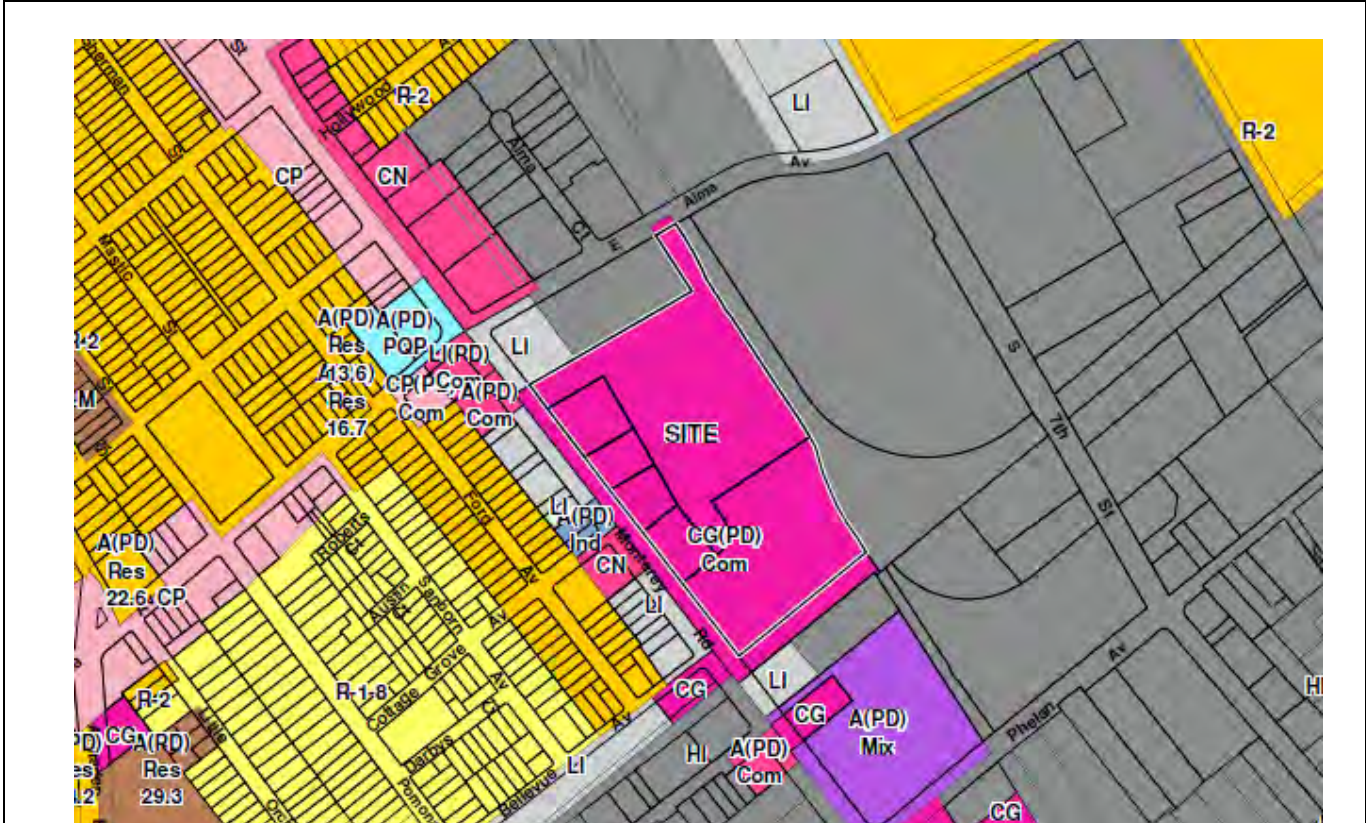


### GENERAL PLAN

This map displays the General Plan zoning for the area. The proposed site is highlighted in purple and labeled 'SITE'. Surrounding areas are color-coded and labeled with zoning codes: yellow for 'RN' (Residential Neighborhood), pink for 'NCC' (Neighborhood Commercial), light blue for 'PQP' (Planned Quarter-Purpose), brown for 'MUN' (Municipal), and green for 'HI' (Heavy Industrial). Major streets shown include Sherman St, Hollywood Av, Alma Av, Monterey Rd, and Phelan Av. The site is located between Alma Av and Monterey Rd, east of the intersection with Phelan Av.

### ZONING

## ZONING



## **RECOMMENDATION**

Planning staff recommends the Planning Commission approve the proposed Planned Development Permit and Determination of Public Convenience or Necessity for the following reasons:

1. The project conforms to the Envision San Jose 2040 General Plan Land Use/Transportation Diagram's designation of Combined Industrial/Commercial which supports commercial uses.
2. The proposed sale of alcoholic beverages for off-site consumption is an ancillary use associated with the neighborhood market that functions as a full-service grocery store.
3. The San Jose Police Department is neutral to this proposal.
4. The project conforms to the requirements of California Environmental Quality Act (CEQA)

## **BACKGROUND**

On March 27, 2014, the applicant, Miriam Montesinos of Pelosi Law Firm, filed requests to allow the sale of alcoholic beverages for off-site consumption at an approved 41,014 square foot grocery store (Walmart Neighborhood Market). The building was approved as part of a larger 257,296 square foot retail center, Sun Garden Center, which is currently under construction. The applicant is requesting to dedicate 1,726 square feet of retail area (4.2 percent of the total floor area) for the sale of alcoholic beverages. The area dedicated to alcohol will be located on the west side of the store. The applicant is not proposing any modifications to the approved building or after-midnight uses as part of this request. The proposed hours of operation are from 6:00 a.m. to 12:00 a.m. daily.

The site is located in a census tract with a reported crime index greater than 20 percent above the city average and a census tract that is considered over-concentrated by the California Department of Alcoholic Beverage Control. Therefore, a Determination of Public Convenience or Necessity (PCN) is required pursuant to Title 6 of the San Jose Municipal Code. As such, a Planned Development Permit (File No. PD14-017) and Determination of Public Convenience or Necessity (File No. ABC14-005) will be considered concurrently by the Planning Commission.

### **Site and Surrounding Uses**

The 41,014 square foot full-service grocery store will be situated within an approved retail center (Sun Garden Center) that is currently under construction. Access to the site will be provided from driveways off of Monterey Road. The retail center development was approved through a Planned Development Rezoning and Planned Development Permit (File Nos. PDC10-026 and PD11-027), which approved the construction of up to 257,296 square feet of commercial uses.

The site is surrounded by industrial uses to the north, south, and northeast across the existing railroad tracks and commercial, industrial, and motel uses to the west across Monterey Road.

## **ANALYSIS**

The proposed project was analyzed for conformance with: 1) the Envision San José 2040 General Plan, 2) required Municipal Code findings, and 3) the California Environmental Quality Act (CEQA).

## General Plan Conformance

The site is designated Combined Industrial/Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram, which allows for a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses. The off-sale of alcoholic beverages use in conjunction with a full-service grocery store is consistent with this designation because it supports the needs of neighboring residential and commercial uses.

Additionally, the proposed use furthers the following goals and policies of the General Plan:

1. Land Use Goal 5 – Neighborhood Serving Commercial: Locate viable, neighborhood-serving commercial uses throughout the city in order to stimulate economic development, create complete neighborhoods, and minimize vehicle miles travelled.

*The approved grocery store is conveniently accessed from arterial streets and is surrounded by a mix of industrial and commercial uses. It serves these immediately surrounding uses as well as nearby residences and creates a neighborhood that offers a variety of products and services. By offering a greater variety of retail goods at one location, the proposal encourages “one-stop” shopping, which potentially reduces the need for additional vehicle trips*

2. Land Use Policy 5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

*The approved retail store will offer a full-service grocery store, contributing to the provision of needed services to the community. The percentage of the floor area dedicated to the off-sale of alcohol is reasonably balanced with the grocery and retail services and will not adversely impact the surrounding area.*

3. Business Growth and Retention Policy 2.6: Promote development to the maximum extent feasible, consistent with other General Plan goals and policies, in order to generate City revenue, create jobs, improve customer convenience, and enhance neighborhood livability.

*The proposal encourages a diversification of retail offerings that can increase revenues for the City and improves customer convenience.*

## Municipal Code Findings

For the approval of this application, the Planning Commission must articulate facts that affirm all required findings for a(n): 1) Planned Development Permit, 2) Off-sale of Alcohol request, and 3) Determination of Public Convenience or Necessity.

### 1.) Required Findings for Planned Development Permit

To approve a Planned Development Permit, the Planning Commission must make the following findings:

- a. The Planned Development Permit, as issued, furthers the policies of the General Plan.

*Analysis of Required Findings: The proposal furthers Land Use Goal 5 in that the approved retail store offers a full-service grocery store, contributing to the provision of needed services to the community. The percentage of the floor area dedicated to the off-sale of alcohol is reasonably balanced with the grocery and retail services and will not adversely impact the surrounding area. The diversification and concentration of retail offerings at one location encourages “one-stop” shopping, which potentially reduces the need for additional vehicle trips. The proposal also*



*conforms to Land Use Policy 5.10 in that the retail market will offer a full range of food choices including fresh fruit, vegetables, and meat, contributing to the provision of needed services to the community. Additionally, the proposal furthers Business Growth and Retention Policy 2.6 in that it encourages a diversification of retail offerings that can increase revenues for the City and improves customer convenience. Therefore, this finding can be made.*

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property.

*Analysis of Required Findings: The subject use will be located within an approved retail building and involves no physical modifications as part of this proposal. Per the Planned Development Zoning (File No. PDC10-026) of this site, a Planned Development Permit is required for conditional uses as identified in the CG Commercial General Zoning District is required. Further, the proposal involves an additional retail use that is a conditional use and ancillary to the retail store. Therefore, this finding can be made.*

- c. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

*Analysis of Required Findings: The applicant is not proposing any physical modifications to the existing approval as part of this proposal. Therefore, this finding can be made.*

- d. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis of Required Findings: There will be no unacceptable negative effects on adjacent properties as the proposal involves no additional physical modifications or expansion of the approved retail use. Therefore, this finding can be made.*

## 2.) Required Findings for Off-sale of Alcohol

This Planned Development Permit may be issued for the off-sale of alcoholic beverages only if the Planning Commission can make the following three findings, if applicable:

- a. For such use at a location closer than 500-feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the city, that the proposed location of the off-sale of alcoholic beverages use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location.

*Analysis of Finding: There are no other establishments within 500 feet of the subject site that involves the off-sale of alcoholic beverages. Therefore, this finding is not applicable. In any event, the proposed use would result only in a total of one such licensed establishment within a 1,000-foot radius from the proposed location.*

- b. For such use at a location closer than 500-feet from any other use involving the off-sale of alcoholic beverages, situate either within or outside the city, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the proposed location, that the resulting excess concentration of such uses will not:

- i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
- ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
- iii. Be detrimental to public health, safety or general welfare.

*Analysis of Required Finding: As stated above, there are no other establishments within 500 feet of the subject site that involves the off-sale of alcoholic beverages. Therefore, this finding is not applicable. However, the proposed use will not result in more than four establishments that sell alcoholic beverages for off-site consumption within a 1,000-foot radius of the subject site.*

- c. For such a use at a location closer than 500-feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150-feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

*Analysis of Required Finding: The subject building is not located within 500-feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150-feet from any residentially zoned property. The closest residentially zoned property is approximately 700 feet to the west across Monterey Road, while the closest school (Rocketship Alma Academy) is approximately 1,800 feet away. Therefore, this finding is not applicable.*

### 3.) Findings for Determination of Public Convenience or Necessity

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny a request for a new liquor license if issuance of the license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of liquor licenses in the area, unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity). An “undue concentration” exists if the site is located in a crime reporting district that has a 20 percent greater number of reported crimes than the citywide average, or the ratio of on-sale retail licenses to population in the census tract exceeds the ratio countywide.

Per the Police Department Memorandum (attached), the project site is located within a census tract over-concentrated with on-sale establishments and in an area over the 20 percent crime index average. Therefore, the City must grant a Determination of Public Convenience or Necessity (PCN) before ABC can issue a Type 21 license for the sale of alcoholic beverages.

The required findings to grant a PCN are identified in Title 6, Chapter 6.84 of the San José Municipal Code. The Planning Commission may issue a PCN only after making all of the findings below:

- a. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined, based upon quantifiable information, that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

*Analysis of Required Finding: The proposed use is not located within a Strong Neighborhoods Initiative area. The Police Department is neutral to this proposal. The sale of alcohol is an ancillary use located interior to a full-service grocery store. Development conditions have been included to mitigate nuisance or adverse impacts, including an operations and mitigation plan that addressed safety and security. Therefore, this finding can be made.*

- b. The proposed use would not lead to the grouping of more than four off-sale uses within a 1,000-foot radius from the exterior of the building containing the proposed use.

*Analysis of Required Finding: The proposed use would not lead to a grouping of more than four off-sale uses within a one thousand-foot radius from the proposed use. Therefore, this finding can be made.*

- c. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence.

*Analysis of Required Finding: The subject building would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence. Therefore, this finding can be made.*

- d. Alcohol sales would not represent a majority of the proposed use.

*Analysis of Required Finding: Approximately 4.2 percent of the total floor area is proposed for alcoholic beverage display and will be located on one aisle on the west side of the store. Therefore, this finding can be made.*

- e. At least one of the following additional findings must be made, if the Planning Commission is able to make all of the four findings enumerated above. The Planning Commission must be able to find at least one of the following:

- i. The census tract in which the proposed outlet for the off-sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant impact on public health or safety; or
- ii. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety; or
- iii. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-sale of alcoholic beverages in the area; or
- iv. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis of Required Finding: The Planning Commission can make finding 5.d. The grocery/retail store will offer a full range of food choices including fresh fruit, vegetables, and meat, contributing to the provision of needed services to the community, in addition to a broad range of other retail products. The percentage of the floor area dedicated to the off-sale of alcohol is reasonably balanced with the grocery and retail services and will not adversely impact the surrounding area.*

## California Environmental Quality Act (CEQA)

Under the provisions of Section 15301(a) (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project only involves a request to allow the sale of the full range of alcoholic beverages for off-site consumption at a grocery store with minor interior alterations.

## CONCLUSION

Staff recommends that the Planning Commission approve the proposed use as all of the applicable findings can be made. This recommendation recognizes that the proposed off-sale of alcoholic beverages is associated with an approved retail store that offers a full-service grocery store, and that the proposed off-sale area would total no more than 4.2 percent of the total floor area. Additionally, the Police Department is neutral to the proposal. The proposal offers patrons increased convenience and access to a greater variety of goods at one location that encourages “one-stop” shopping with the potential added benefit of decreasing the need for additional vehicle trips.

## PUBLIC OUTREACH/INTEREST

Staff has received six copies of a letter (attached) from community members requesting that alcohol sales be limited to 6:00 a.m. 10:00 p.m., that sales be restricted to beer and wine only, and that the square footage dedicated to alcohol sales be reduced.

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. A sign describing the project has been displayed at the project site. The Planning Commission Hearing agenda is posted on the City of San José website, which includes a copy of the staff report and staff has been available to discuss the project with members of the public.

**Project Manager:** Rebecca Bustos

**Approved by:** 

**Date:** 6/2/14

| Owner/Applicant  | Attachments:   |
|--|--|
| <b>Owner:</b><br>Sun Garden Tenants in Common<br>1122 Willow Street<br>San Jose, California 95125<br><br><b>Applicant:</b><br>Miriam Montesinos, Esq<br>Pelosi Law Group<br>560 Mission Street, Suite 2800<br>San Francisco, CA. 94105 | Draft Resolution<br>Police Memorandum<br>Off-Sale of Alcohol Map<br>Letters from community members (6)<br>Operations and Security Plan<br>Walmart Responsible Vendor of Alcohol Policy<br>Reduced Plan Set |



## **RESOLUTION NO.**

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Planned Development Permit and Determination of Public Convenience or Necessity to allow the sale of alcoholic beverages for off-site consumption in an approved 41,014 square foot full-service grocery store (Walmart Neighborhood Market) on a 4.93 gross acre site located on the east side of Monterey Road, approximately 300 feet south of East Alma Avenue.

### **FILE NO. PD14-017 and ABC14-005**

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 14, 2014, an application (File No. PD14-017) was filed for a Planned Development Permit and Determination of Public Convenience or Necessity (File No. ABC14-005) for the purpose of allowing the sale of alcoholic beverages for off-site consumption in an approved 41,014 square foot full-service grocery store (Walmart Neighborhood Market) on an approximately 4.93 gross acre site (hereinafter referred to as "subject property"), situated in the A(PD) Planned Development Zoning District, located on the east side of Monterey Road, approximately 300 feet south of East Alma Avenue in San José; and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Walmart Neighborhood Market #4174 1450 Monterey Road, San Jose, CA 95112." Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

WHEREAS, this Planning Commission has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ AS FOLLOWS:

The Planning Commission determines, concludes and finds as follows:

1. **Site Description and Surrounding Uses.** The 41,014 square foot full-service grocery store is situated within an approved retail center that is currently under construction (Sun Garden Center). Access to the Project site will be provided from driveways off of Monterey Road. The retail center development was approved through a Planned Development Rezoning and Planned Development Permit (File Nos. PDC10-026 and PD11-027), which approved the construction of up to 257,296 square feet of commercial uses. The site is surrounded by industrial uses to the north, south, and northeast across the existing railroad tracks and commercial, industrial, and motel use to the west across Monterey Road.
2. **Project Description.** The proposed Project would allow the sale of alcoholic beverages for off-site consumption in an approved 41,014 square foot full-service grocery store (Walmart Neighborhood Market), with a maximum of 1,726 square feet of retail area (4.2 percent of total floor area) to be used for the sale of alcoholic beverages. The area dedicated to alcoholic beverages will be located on the west side of the store. The applicant is not proposing any modifications to the approved building or after-midnight uses as part of this request. The hours of operation will be from 6:00 a.m. to 12:00 a.m. daily.
3. **General Plan Conformance.** The Project is consistent with the General Plan in that:
  - a. The Project is consistent with the site's Envision San Jose 2040 General Plan Land Use / Transportation Diagram designation of Combined Industrial/Commercial which allows for commercial uses. The grocery store is consistent with this designation because it supports the needs of neighboring residential and commercial uses.
  - b. The Project furthers Land Use Goal 5 – Neighborhood Serving Commercial: Locate viable neighborhood serving commercial uses throughout the city in order to stimulate economic development, create complete neighborhoods, and minimize vehicle miles traveled.
  - c. The Project furthers Land Use Policy 5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.
4. **Zoning Code Compliance.** The proposed use is within an approved Planned Development Zoning District, which requires a Planned Development Permit to be issued to allow the off-sale of alcoholic beverages. No modifications to the approved exterior façade or footprint are proposed with this request.
5. **Environmental Review.** Under the provisions of 15301(A) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this Project was found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

## 6. Planned Development Permit Findings.

- a. The Planned Development Permit, as issued, furthers the policies of the General Plan.

*Analysis of Required Findings: The proposal furthers General Plan Land Use Goal 5 in that the approved retail store offers a full-service grocery store, contributing to the provision of needed services to the community. The percentage of the floor area dedicated to the off-sale of alcohol is reasonably balanced with the grocery and retail services and will not adversely impact the surrounding area. The diversification and concentration of retail offerings at one location encourages “one-stop” shopping, which potentially reduces the need for additional vehicle trips. The proposal also conforms to Land Use Policy 5.10 in that the retail market will offer a full range of food choices including fresh fruit, vegetables, and meat, contributing to the provision of needed services to the community. Additionally, the proposal furthers Business Growth and Retention Policy 2.6 in that it encourages a diversification of retail offerings that can increase revenues for the City and improves customer convenience.*

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property.

*Analysis of Required Findings: The subject use will be located within an approved retail building and involves no physical modifications as part of this proposal. Per the Planned Development Zoning (File No. PDC10-026) of this site, a Planned Development Permit is required for conditional uses as identified in the CG Commercial General Zoning District is required. Further, the proposal involves an additional retail use that is a conditional use and ancillary to the retail store.*

- c. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

*Analysis of Required Findings: The applicant is not proposing any physical modifications to the existing approval as part of this proposal.*

- d. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis of Required Findings: There will be no unacceptable negative effects on adjacent properties as the proposal involves no additional physical modifications or expansion of the approved retail use.*

7. **Findings for Off-sale of Alcohol.** *The Project location is not closer than 500-feet to or from any other establishment involving the off-sale of alcoholic beverages. The proposed use would result in a total of one such licensed establishment within a 1,000-foot radius from the Project location. The Project site is not located within 500-feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or closer than 150-feet from any residentially zoned property. The closest residentially zoned property is approximately 700 feet to the west across Monterey Road, while the closest school (Rocketship Alma Academy) is approximately 1,800 feet away. For these reasons, the findings in Section 20.80.900 of Title 20 of the Municipal Code related to the off-sale of alcohol are not applicable to this Project.*



## 8. Determination of Public Convenience or Necessity Findings.

- a. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined, based upon quantifiable information, that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

*Analysis of Required Finding: The proposed use is not located within a Strong Neighborhoods Initiative area. The Police Department is neutral to this proposal.*

- b. The proposed use would not lead to the grouping of more than four off-sale uses within a 1,000-foot radius from the exterior of the building containing the proposed use.

*Analysis of Required Finding: The proposed use would be the only off-sale use within a one thousand-foot radius from its location.*

- c. The proposed use would not be located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence.

*Analysis of Required Finding: The subject building is not located within 500 feet of a school, day care center, public park, social services agency, or residential care or service facility, or within 150 feet of a residence.*

- d. Alcohol sales would not represent a majority of the proposed use.

*Analysis of Required Finding: Approximately 4.2 percent of the total floor area is proposed for alcoholic beverage display and will be located on one aisle on the west side of the store.*

- e. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis of Required Finding: The grocery store will offer a full range of food choices including fresh fruit, vegetables, and meat, contributing to the provision of needed services to the community. The percentage of the floor area dedicated to the off-sale of alcohol is reasonably balanced with the grocery and retail services and will not adversely impact the surrounding area.*

In accordance with the findings set forth above, a Planned Development Permit and a Determination of Public Convenience and Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This Planning Commission expressly declares that it would not have granted this Permit and Determination except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San Jose Municipal Code, should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:

- a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire four years from and after the date of adoption of the Resolution by the Planning Commission, granting this Permit, if within such four-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of adoption is the date the Resolution granting this Planned Development Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit pursuant to Title 20 of the San José Municipal Code.
  3. **Conformance with Plans.** The use of this property shall conform to approved plans entitled, "Walmart Neighborhood Market #4174 1450 Monterey Road, San Jose, CA 95112" on file with the Department of Planning, Building and Code Enforcement.
  4. **Use Authorization.** This Planned Development Permit authorizes the off-sale of the full range of alcoholic beverages, to be implemented only in conjunction with a retail establishment that offers a full-service grocery store.
  5. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcoholic Beverage Control (ABC). The applicant shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control and the required ABC license.
  6. **Limitations on Area of Alcohol Sales.** The sale of alcohol for offsite consumption allowed by this Permit shall be limited and incidental to the primary use retail establishment grocery store only. "Full service grocery store" as used herein means a retail establishment that provides a full and wide complement of fresh produce, meats, grains, dairy goods, and baked products, together with other food and household merchandise for general public consumption. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 4.2 percent, or up to 1,726 square feet, of the total floor area of the retail store space that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.
  7. **Building Permit/Certificate of Occupancy.** No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
  8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
  9. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.

10. **Permittee Responsibility.** The permittee shall ensure that the use authorized by this Permit is implemented in conformance with all of the provisions of this Permit.
11. **Hours of Operation.** This use is permitted to operate within the A(PD) Planned Development Zoning District between the hours of 6:00 a.m. and 12:00 a.m. Operation beyond established hours will require the approval of a Planned Development Amendment.
12. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner.
13. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.
14. **Operations and Management Plan.** The establishment shall operate in a manner consistent with the Operations and Management Plan (“Operations & Security Plan for Alcohol Sales Application PD14-017/ABC14-005”), on file with the Department of Planning, Building and Code Enforcement and incorporated herein by this reference.
15. **Conflict with Operations and Management Plan.** If any element of the Operations and Management Plan conflicts with any conditions included in this Permit, the conditions of the Permit shall take precedence. Any change to the Operations and Management Plan shall require approval of the Director of Planning in the form of a Permit Adjustment or Amendment.
16. **Disturbance Coordinator.** The permittee shall implement the following:
  - a. Provide an on-site disturbance coordinator during all hours of operation;
  - b. Post contact information for the disturbance coordinator in a prominent location within the establishment near the primary entrance;
  - c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment’s response to each complaint.
  - d. Ensure that the log is kept current and is available on the project site for inspection by City staff.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
18. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
19. **Site Maintenance.** The site and public right-of-way frontage shall be maintained free of litter, refuse, and debris.
20. **Building Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
21. **Exterior Clean Up.** The permittee shall be responsible for removing any litter (which emanates from the subject use) at the subject site and on all adjacent properties within 200 feet of the subject property between 7:00 and 8:00 a.m. on a daily basis. Garbage pick up shall not occur later than 10:00 p.m. or prior to 7:00 a.m. No cleaning and maintenance for outdoor areas that utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m.



22. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed / permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
23. **Lighting.** On-site lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
24. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - The use as presently conducted creates a nuisance

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and a Determination of Public Convenience or Necessity are hereby approved.

**APPROVED** this 11<sup>th</sup> day of June, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

NORMAN KLINE  
Chairperson

ATTEST:

---

HARRY FREITAS  
Director of Planning, Building & Code Enforcement  
Planning Commission Secretary

#### NOTICE TO PARTIES

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*



# Memorandum

**TO:** Rebecca Bustos  
Planning Department

**FROM:** Mike Epp #3048  
San Jose Police Vice Unit

**SUBJECT:** Walmart - PD14-017 ABC14-005  
1450 Monterey Rd.

**DATE:** April 30, 2014

---

Approved

Date

---

I have received your request for input regarding the Walmart located at 1450 Monterey Rd San Jose, Ca. Walmart is a full service grocery store seeking a Planned Development Permit and a Determination of Public Convenience or Necessity (PCN) to allow off-sale of alcohol.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or its proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area.

1450 Monterey Rd San Jose Police Beat L1. The reported crime statistics as defined by B&P Section 23958.4(c) **are** over the 20% crime index thus the location **is** considered unduly concentrated per B&P Section 23958.4 (a)(1).

## Police Beat Crime Statistics

| Beat         | Index Crimes | Arrests | Total | 20% Above Average |
|--------------|--------------|---------|-------|-------------------|
| L1 (2013)    | 310          | 302     | 612   | Yes               |
| City Average | 333          | 171     | 505   |                   |

Department of Alcohol Beverage Control (ABC) records indicate that 1450 Monterey Rd San Jose is in census tract 5031.22. Pursuant to B&P Section 23958.4 (a)(2), the ratio of off-sale retail licenses population in census tract 5031.22 **does** exceed the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

**Authorized and Current ABC Licenses in Census Tract 5031.22**

| Census Tract | Authorized ABC Licenses as of May 2012 |            | Current ABC Licenses as of May 29, 2014 |            | Unduly Concentrated |            |
|--------------|--|------------|---|------------|---------------------|------------|
|              | On - Sale                              | Off - Sale | On – Sale                               | Off – Sale | On - Sale           | Off – Sale |
| 5031.22      | 4                                      | 1          | 5                                       | 5          | Yes                 | Yes        |

Due to Walmart's employee training in the area of alcohol sales and effective security programs/procedures a significant increase in the demand for police services in the area is not anticipated.

This location which will have a full service grocery store with the off-sale of alcohol, will add a convenience for residents of the area. The San Jose Police Department is **neutral** to the issuance of a Planned Development Permit and the determination of a Public Convenience or Necessity to allow off-sale of alcohol.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Mike Epp #3048  
Administrative Officer  
Special Investigations/Vice





File No: PD14-017 & ABC14-005

District: 7

## Nearby Alcohol Off-Sales



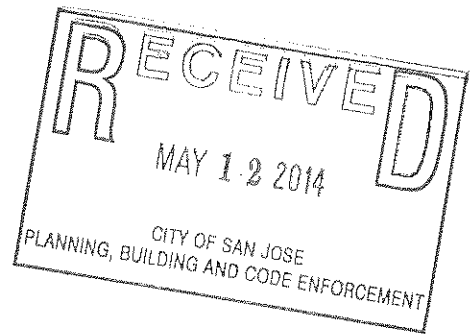
Prepared by the Department of Planning,  
Building and Code Enforcement  
03/28/2014



City of San Jose Planning Commission  
200 E. Santa Clara St. 3<sup>rd</sup> Floor  
San Jose, CA 95112

Reference: Pd14-017

May 3, 2014



Dear Rebecca Bustos,

We were recently notified that Walmart has applied for an alcohol license for a supermarket it plans to build on the corner Monterey Road and Alma, adjacent to my neighborhood. We are not sure if this market will be operating twenty-four hours but we understand they are planning to dedicate 1,726 square feet of floor space for alcohol sales.

The area which the market will operate is in a high crime area with a high census of alcohol licenses. Our preference is a denial of the Conditional Use Permit (CUP) due to the overconcentration of alcohol outlets, but we understand that the City created a policy which automatically approves Grocery Stores for CUP's. Since approval appears likely, we ask that you consider restricting the hours of alcohol sales from 6:00 a.m. to 10:00 p.m., limit the sale of alcohol to beer and wine (no distilled spirits), and reduce the square footage of alcohol sales. In addition to the slated Walmart, we currently have Chavez Market, Smart and Final, Grocery Outlet, and a another Walmart nearby selling alcohol along with multiple unrestricted liquor stores servicing the area.

We again understand the city's policy towards restaurants and grocery stores when it comes to alcohol sales but in our view this policy is expanding the sales of alcohol to a greater degree with less oversight. As activists in our community we are continually working to clean up our neighborhood from unwanted crimes and alcohol dependency, and honoring our request will assist us achieve this goal.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Aurelia Sanchez and Richard Stewart".

Aurelia Sanchez and Richard Stewart  
Residents of the Spartan Keyes Neighborhood

CC: Dept. of Alcohol Beverage Control

May 14, 2014

San Jose City Planning Commission  
200 E Santa Clara St. 3<sup>rd</sup> Floor  
San Jose, CA 95112  
Attn: Rebecca Bustos

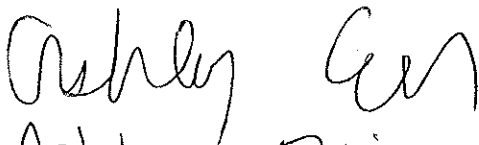
Re: PD14-017 Walmart's Request to sell alcohol at a store to be built on the corner of Monterey Rd and Alma

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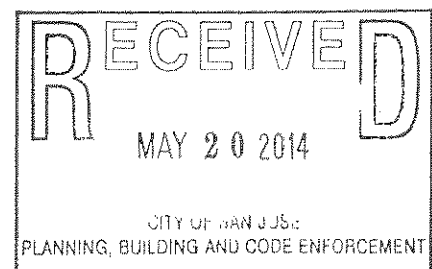
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We again understand the City's policy towards restaurants and grocery stores when it comes to alcohol sales, but hope that some limitations can be considered to minimize the impact of more alcohol on our neighborhood.

Respectfully Submitted,

  
Ashley Ellis

cc: Alcohol Beverage Control Department  
100 Paseo de San Antonio #119  
San Jose, CA 95113  
Attn: Gordon Gourdin



May 14, 2014

San Jose City Planning Commission  
200 E Santa Clara St. 3<sup>rd</sup> Floor  
San Jose, CA 95112  
Attn: Rebecca Bustos

Re: PD14-017 Walmart's Request to sell alcohol at a store to be built on the corner of Monterey Rd and Alma

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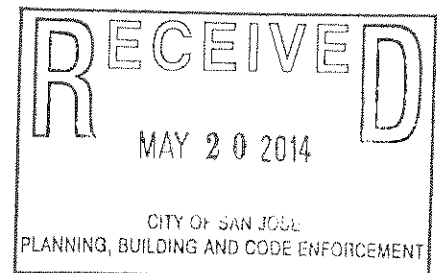
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Respectfully Submitted,

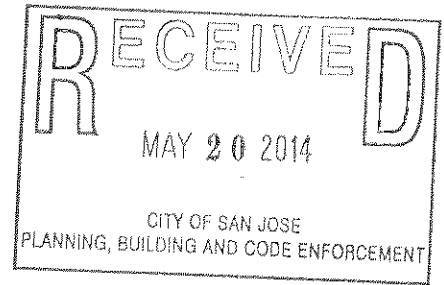
*Elizabeth Figueroa*

*Spartan Keyes Neighborhood Action Coalition*

cc: Alcohol Beverage Control Department  
100 Paseo de San Antonio #119  
San Jose, CA 95113  
Attn: Gordon Gourdin



May 14, 2014



San Jose City Planning Commission  
200 E Santa Clara St. 3<sup>rd</sup> Floor  
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We again understand the City's policy towards restaurants and grocery stores when it comes to alcohol sales, but hope that some limitations can be considered to minimize the impact of more alcohol on our neighborhood.

Respectfully Submitted,

Richard Stewart

408-821-4260

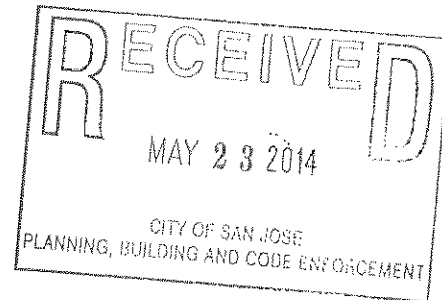
951 S. 1st St, 301D

cc: Alcohol Beverage Control Department  
100 Paseo de San Antonio #119  
San Jose, CA 95113  
Attn: Gordon Gourdin

San Jose, CA 95112



May 14, 2014



San Jose City Planning Commission  
200 E Santa Clara St. 3<sup>rd</sup> Floor  
San Jose, CA 95112  
Attn: Rebecca Bustos

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100 Paseo de San Antonio #119  
San Jose, CA 95113  
Attn: Gordon Gourdin

May 14, 2014



San Jose City Planning Commission  
200 E Santa Clara St. 3<sup>rd</sup> Floor  
San Jose, CA 95112  
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We again understand the City's policy towards restaurants and grocery stores when it comes to alcohol sales, but hope that some limitations can be considered to minimize the impact of more alcohol on our neighborhood.

Respectfully Submitted,

*Guil Valente*  
*Guil Valente*  
854 S. 8th St.  
San Jose, CA 95112

cc: Alcohol Beverage Control Department  
100 Paseo de San Antonio #119  
San Jose, CA 95113  
Attn: Gordon Gourdin

**OPERATIONS & SECURITY PLAN FOR ALCOHOL SALES APPLICATION**  
**PD14-017/ABC14-005**  
**Walmart Supercenter #4174**  
**1450 Monterey Road**  
**San Jose, CA**

At Walmart, we take the safety and security of our customers and associates seriously, and demonstrate this commitment by meeting or exceeding retail industry standards in addressing these issues.

Because we recognize that no single operations and security plan works for every location, we translate best practices across the chain while empowering the Store Managers and Asset Protection Managers to identify and employ the measures appropriate for each facility.

Below is a list of security measures that will be implemented at this store if the sale of alcohol for off-site consumption is approved.

**Surveillance Camera System:** A 24 hour Electronic Security System (ESS) consisting of interior alarm sensors and closed circuit television (CCTV) will be installed at the store. Multiple interior and exterior cameras that record in color will be mounted in and around the facility, including above the proposed alcohol sales area to ensure the alcohol inventory will be monitored at all times. These cameras will be equipped with digital signal processing and backlight compensation circuitry to increase their ability to operate in varying lighting conditions. The video recording camera system continuously records, stores and is capable of playing back images, and is fully functional at all times.

**Signage:** Signage indicating the use of closed circuit television has been shown to deter criminal activity. For this reason, signs indicating that cameras are in use will be displayed throughout the parking lot. Indicator signs will also be placed in the store to alert customers to the presence of security cameras and electronic merchandise tagging systems.

**Parking Lot Patrol:** Walmart associates will patrol the parking lot while retrieving shopping carts. Any observed unusual behavior will be reported to the Store Managers, who will make inquiries of the people partaking in the suspicious activities.

**Securing Alcoholic Beverages:** Walmart will utilize strategies to secure individual containers of alcohol, such as security caps on bottled liquor.

**Employee Training:** Walmart associates and the Store Managers will receive safety and security awareness training that will aid in recognizing and responding to safety or security related incidents. In addition, newly hired associates will be subject to a criminal background check and must pass a drug screen test as permitted by state law.

**Responsible Alcohol Sales Training:** All Store Managers and associates who sell alcohol will complete Walmart's "Responsible Vendor of Alcohol" training program.

**Alcohol related issues:** Employees responsible for the sale of alcohol beverages will be trained to recognize the symptoms of an obviously intoxicated person and will not allow the sale of alcohol to an obviously intoxicated patron.

**Emergencies:** All employees will be trained to report emergencies to the Store Manager on duty, and to law enforcement as appropriate.

**Store Contacts:** The Walmart's designated contact person for this store is [TBP], who can be reached 24 hours per day, seven days per week, at [TBP].

**Hours of Operation:** The store will operate from 6am to midnight, seven (7) days a week. If allowed, alcohol would be sold during those hours of operation.

Walmart is committed to working closely with local communities and officials to determine the best plan for safety and security at each facility. If the sale of alcohol for off-site consumption is approved for this store, Walmart will implement the above measures, which will provide a safe environment for associates and customers at the store.

Walmart looks forward to providing a safe environment in which customers will have the convenience of purchasing alcohol along with groceries and other merchandise.

## Wal-Mart Stores, Inc. – Responsible Vendor of Alcohol

Because Wal-Mart takes its responsibilities as a good corporate citizen seriously, Wal-Mart trains its associates and managers on responsible policies and procedures for selling alcohol to the public. The policy focuses on preventing sales to minors, to already intoxicated customers, and during prohibited times and days.

### Summary of Alcohol Policy

Our policies prohibit underage sales and are reinforced with technology, training, monitoring, and discipline.

In order to prevent such sales, Wal-Mart has instituted the following procedures:

- Instruct store associates on Wal-Mart's Identification Policy, which outlines the following:
  - Approved forms of ID – all of which are government-issued
  - Pointers for spotting fake IDs and intoxicated customers.
  - "ACE" steps for complying with law:
    - Assess – Assess whether the customer appears under 27 (40 – After May, 1, 2008)
    - Check – Check for ID and birth date
    - Enter – Enter date of birth into register to determine age

### Technology:

- Registers perform an integral role in our alcohol sales compliance program by helping to prevent sales to minors and sales during restricted hours.
- Register Prompts in Place to Prevent Sales to Minors:
  - When an alcoholic beverage is scanned:
    - The register stops the transaction and asks if the customer appears to be under 27 years old (under 40 in some markets).
    - The associate must then enter the customers' Date of Birth before the transaction can proceed.
  - Cashiers must require ID from any customer who appears to be under the age of 27. In some markets, the age to request ID is anyone under 40. The ID 40 Program will be in place nationwide by May 1, 2008.
- Restricted Hours:
  - Registers are programmed with applicable alcohol sales days and hours by the home office.
  - If an associate attempts to sell alcohol during a prohibited time, the register will stop the transaction.
  - Generally, these prompts are set according to state law.
  - If the locality in which a particular store has more restrictive hours of alcohol sales than the state, hours of sale are set based on the local rule.

### Training:

- New employee orientation for store managers includes alcohol compliance training.
- When a store obtains an alcohol license, all associates who act, or might act, as cashiers must take an alcohol compliance computer-based training (CBL) program and score 100%.
- Associates are required to score 100% on the alcohol CBL within 15 days of the stores' license issuance or hire date.
- All associates who are coded as cashiers must retake the alcohol CBL yearly upon the anniversary of their date of hire. This ensures that associates are trained annually.
- *Training includes information on how to turn down alcohol sales.*

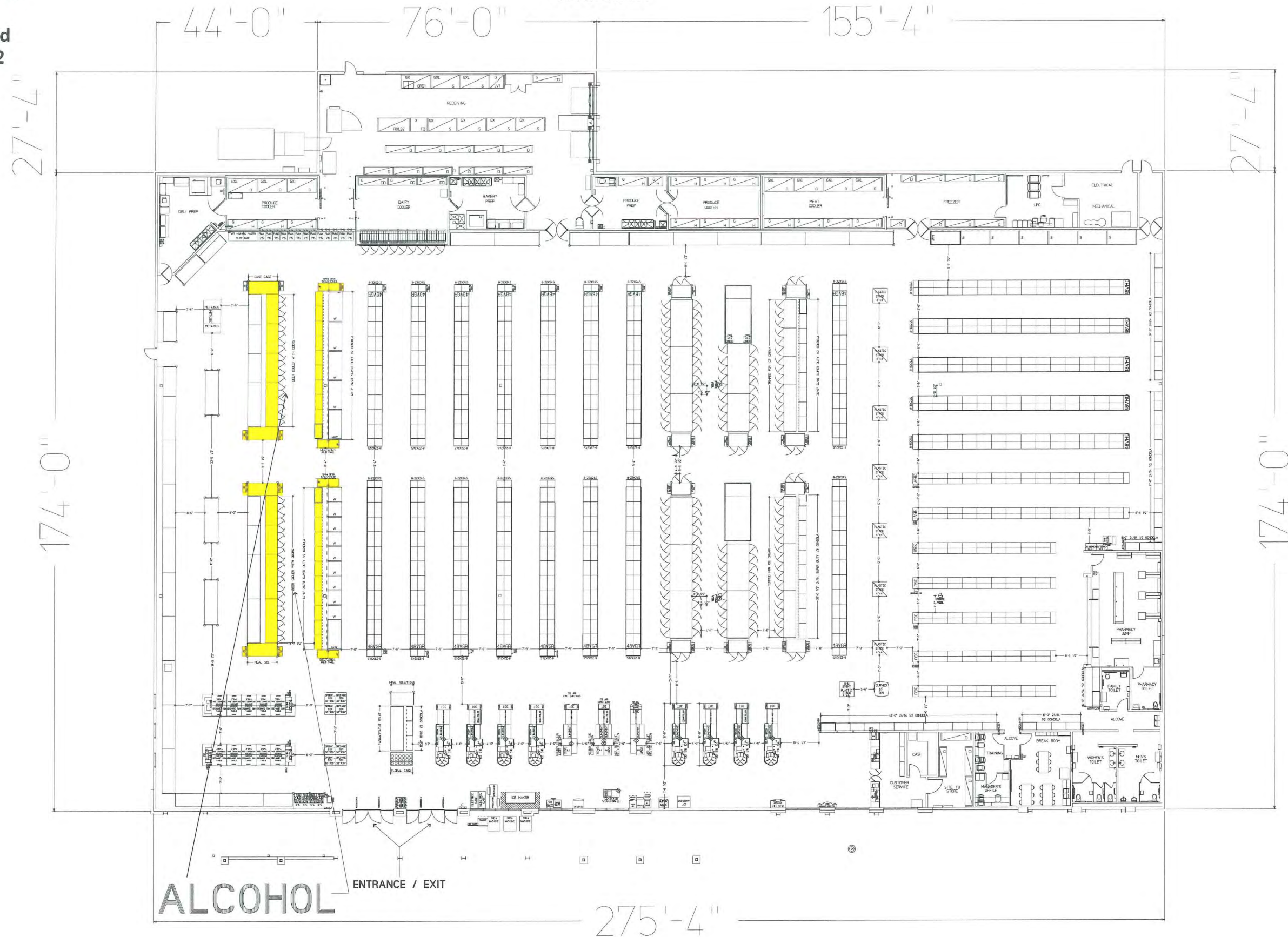
### Monitoring:

- Where required by law, customer service managers (CSMs) must complete transactions for employees under 21.

### Discipline:

Associates who violate this policy will be terminated and not eligible for rehiring.





Total Building Square Footage: 41,014 sq ft.  
 ■ Alcohol Sales Area: Approximately 1,726 sq. ft. (Includes aisle area)  
 Percentage of Alcohol Sales Area of Building Square Footage: Approximately 4.2%

## Monterey Road

A  
N



# Site Plan:

1450 Monterey Road,  
San Jose, CA

(1) Type 21

General Liquor License



**HI** = HEAVY INDUSTRIAL



500 FT



500  
Feet



**The following  
items were  
received after  
packets were  
distributed.**

VIA EMAIL: rebecca.bustos@sanjoseca.gov

San Jose Planning Commission  
c/o Rebecca Bustos  
City of San Jose Planning Department  
200 E Santa Clara Street  
San Jose, CA 95113

**RE: PD14-017 & ABC14-005 – Sun Garden Center Grocery Store**

Dear San Jose Planning Commissioners:

My name is Jeff Pohle and I'm a 3<sup>rd</sup> generation owner of **Southern Lumber Company**. We have been in business at the corner of Alma and Monterey Road for over 100 years. Our business shares a property line with the subject site of the future Sun Garden Shopping Center and we are thrilled the 3<sup>rd</sup> generation owners next door are investing again in our district. It has been a vacant, blighted site for over 10 years now, a site that once was home to one of the most successful canneries in the United States.

I'm writing to urge you to continue your record of support for Sun Garden Center by approving the above referenced application for off premises alcohol sales in its entirety and without modification. A full service grocery store is long overdue in our area and it deserves every opportunity to have what it needs to be successful and to operate as it does in other areas of our City.

Similar to the value of our business to the City's bottom line, the new grocery store will help increase sales tax revenues which we need for everything from public safety to libraries. It will help improve our neighborhood by adding stores that neighborhood residents – and my employees – need, particularly to shop for groceries. The development will help beautify the neighborhood and clean-up the blight in the surrounding area.

I want new retail establishments in this development to be successful over the long term, it's an opportunity that has been a long time coming to our area of Monterey Road so we don't want to miss or restrict with unnecessary regulations. Please approve this application and give Monterey Road the uplift in economic activity it really needs.

Sincerely,

Jeff Pohle  
Owner, Southern Lumber Company  
408-494-7338

From: lovie@sonic.net <lovie@sonic.net>  
Sent: Tuesday, June 10, 2014 2:06 PM  
To: Bustos, Rebecca  
Cc: Tony; Lovie Spencer  
Subject: PD14-017 & ABC14-005 (Administrative Hearing) Sun Garden Center Grocery Store]

June 10, 2014

VIA EMAIL: rebecca.bustos@sanjoseca.gov

San Jose Planning Commission  
c/o Rebecca Bustos  
City of San Jose Planning Department  
200 E Santa Clara Street  
San Jose, CA 95113

RE: PD14-017 & ABC14-005 (Administrative Hearing) Sun Garden Center  
Grocery Store

Dear San Jose Planning Commissioners:

My name is Lovie Spencer and for over 50 years the Spencer ancestral home has been a part of the Greater Washington Community neighborhood adjacent to this project. My neighbor, Tony Geraci, on whose behalf I also write, has lived here the entire 70+ years of his life. Together with our neighbors, we have supported development of the Sun Garden Shopping Center several blocks from our homes since its initial planning submittals in 2011, and are pleased that the 3rd-generation owners, under the leadership of Michael Mulcahy, are investing again in our district.

With construction underway, it is a dream come true and we are assured thereby that this former 20 acre vacant and blighted site for the prior 12 years will not only serve our current 'food desert' neighborhood with fresh and competitively priced foods but development of the remainder of the Center will funnel more much-needed goods, services and jobs to our neighborhood and clean-up blight in the surrounding area.

On behalf of myself and my neighbors, I'm writing to urge you to continue your record of support for Sun Garden Center by approving the above-referenced application for off-premises alcohol sales in its entirety and without modification. A full service grocery store is long overdue in our area and it deserves every opportunity to have what it needs to be successful and to operate as it does in other areas of our City.

"We want to do everything possible for the success of this retail center," said San Jose Vice Mayor Madison Nguyen, soliciting colleague support of an egress easement variance for this project at a City Council Meeting I attended. I agree that we want new retail establishments in this development to be successful over the long term by not being strapped with unnecessary restrictions and regulations unequally applied in a competitive marketplace.

Please approve this off sale alcohol application as applied for and as being supported by City Staff to give Monterey Road the uplift in economic activity it really needs.



Respectfully submitted,

Lovie B. Spencer, Jr.

lovie@sonic.net

408.638.0331

33 Floyd Street

San Jose CA 95110

Tony Geraci,

"Tony" <ger567@peoplepc.com>

408.292.7055

42 W. Humboldt Street

San Jose CA 95110